

By: Carona

5.J.R. No. 42

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing a home equity line
2 of credit, providing for administrative interpretation of home
3 equity lending law, and otherwise relating to the making,
4 refinancing, repayment, and enforcement of home equity loans.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 50(a), Article XVI, Texas Constitution,
7 is amended to read as follows:

8 (a) The homestead of a family, or of a single adult person,
9 shall be, and is hereby protected from forced sale, for the payment
10 of all debts except for:

11 (1) the purchase money thereof, or a part of such
12 purchase money;

13 (2) the taxes due thereon;

14 (3) an owelty of partition imposed against the
15 entirety of the property by a court order or by a written agreement
16 of the parties to the partition, including a debt of one spouse in
17 favor of the other spouse resulting from a division or an award of a
18 family homestead in a divorce proceeding;

19 (4) the refinance of a lien against a homestead,
20 including a federal tax lien resulting from the tax debt of both
21 spouses, if the homestead is a family homestead, or from the tax
22 debt of the owner;

23 (5) work and material used in constructing new
24 improvements thereon, if contracted for in writing, or work and

1 material used to repair or renovate existing improvements thereon
2 if:

3 (A) the work and material are contracted for in
4 writing, with the consent of both spouses, in the case of a family
5 homestead, given in the same manner as is required in making a sale
6 and conveyance of the homestead;

7 (B) the contract for the work and material is not
8 executed by the owner or the owner's spouse before the fifth day
9 after the owner makes written application for any extension of
10 credit for the work and material, unless the work and material are
11 necessary to complete immediate repairs to conditions on the
12 homestead property that materially affect the health or safety of
13 the owner or person residing in the homestead and the owner of the
14 homestead acknowledges such in writing;

15 (C) the contract for the work and material
16 expressly provides that the owner may rescind the contract without
17 penalty or charge within three days after the execution of the
18 contract by all parties, unless the work and material are necessary
19 to complete immediate repairs to conditions on the homestead
20 property that materially affect the health or safety of the owner or
21 person residing in the homestead and the owner of the homestead
22 acknowledges such in writing; and

23 (D) the contract for the work and material is
24 executed by the owner and the owner's spouse only at the office of a
25 third-party lender making an extension of credit for the work and
26 material, an attorney at law, or a title company;

27 (6) an extension of credit that:

1 (A) is secured by a voluntary lien on the
2 homestead created under a written agreement with the consent of
3 each owner and each owner's spouse;

4 (B) is of a principal amount that when added to
5 the aggregate total of the outstanding principal balances of all
6 other indebtedness secured by valid encumbrances of record against
7 the homestead does not exceed 80 percent of the fair market value of
8 the homestead on the date the extension of credit is made;

9 (C) is without recourse for personal liability
10 against each owner and the spouse of each owner, unless the owner or
11 spouse obtained the extension of credit by actual fraud;

12 (D) is secured by a lien that may be foreclosed
13 upon only by a court order;

14 (E) does not require the owner or the owner's
15 spouse to pay, in addition to any interest, fees to any person that
16 are necessary to originate, evaluate, maintain, record, insure, or
17 service the extension of credit that exceed, in the aggregate,
18 three percent of the original principal amount of the extension of
19 credit;

20 (F) may be ~~[is not]~~ a form of open-end account
21 that may be debited from time to time or under which credit may be
22 extended from time to time;

23 (G) is payable in advance without penalty or
24 other charge;

25 (H) is not secured by any additional real or
26 personal property other than the homestead;

27 (I) is not secured by homestead property

1 designated for agricultural use as provided by statutes governing
2 property tax, unless such homestead property is used primarily for
3 the production of milk;

4 (J) may not be accelerated because of a decrease
5 in the market value of the homestead or because of the owner's
6 default under other indebtedness not secured by a prior valid
7 encumbrance against the homestead;

8 (K) is the only debt secured by the homestead at
9 the time the extension of credit is made unless the other debt was
10 made for a purpose described by Subsections (a)(1)-(a)(5) or
11 Subsection (a)(8) of this section;

12 (L) is scheduled to be repaid in substantially
13 equal successive periodic [~~monthly~~] installments, not less often
14 than monthly, beginning no later than two months from the date the
15 extension of credit is made, each of which equals or exceeds the
16 amount of accrued interest as of the date of the scheduled
17 installment;

18 (M) is closed not before:

19 (i) the 12th day after the later of the date
20 that the owner of the homestead submits an application to the lender
21 for the extension of credit or the date that the lender provides the
22 owner a copy of the notice prescribed by Subsection (g) of this
23 section; and

24 (ii) the first anniversary of the closing
25 date of any other extension of credit described by Subsection
26 (a)(6) of this section secured by the same homestead property;

27 (N) is closed only at the office of the lender, an

1 attorney at law, or a title company;

2 (O) permits a lender to contract for and receive
3 any fixed or variable rate of interest authorized under statute;

4 (P) is made by one of the following that has not
5 been found by a federal regulatory agency to have engaged in the
6 practice of refusing to make loans because the applicants for the
7 loans reside or the property proposed to secure the loans is located
8 in a certain area:

9 (i) a bank, savings and loan association,
10 savings bank, or credit union doing business under the laws of this
11 state or the United States;

12 (ii) a federally chartered lending
13 instrumentality or a person approved as a mortgagee by the United
14 States government to make federally insured loans;

15 (iii) a person licensed to make regulated
16 loans, as provided by statute of this state;

17 (iv) a person who sold the homestead
18 property to the current owner and who provided all or part of the
19 financing for the purchase; ~~or~~

20 (v) a person who is related to the homestead
21 property owner within the second degree of affinity or
22 consanguinity; or

23 (vi) a person regulated by this state as a
24 mortgage broker; and

25 (Q) is made on the condition that:

26 (i) the owner of the homestead is not
27 required to apply the proceeds of the extension of credit to repay

1 another debt except debt secured by the homestead or debt to another
2 lender;

3 (ii) the owner of the homestead not assign
4 wages as security for the extension of credit;

5 (iii) the owner of the homestead not sign any
6 instrument in which blanks are left to be filled in;

7 (iv) the owner of the homestead not sign a
8 confession of judgment or power of attorney to the lender or to a
9 third person to confess judgment or to appear for the owner in a
10 judicial proceeding;

11 (v) the lender, at the time the extension of
12 credit is made, provide the owner of the homestead a copy of all
13 documents signed by the owner related to the extension of credit;

14 (vi) the security instruments securing the
15 extension of credit contain a disclosure that the extension of
16 credit is the type of credit defined by Section 50(a)(6), Article
17 XVI, Texas Constitution;

18 (vii) within a reasonable time after
19 termination and full payment of the extension of credit, the lender
20 cancel and return the promissory note to the owner of the homestead
21 and give the owner, in recordable form, a release of the lien
22 securing the extension of credit or a copy of an endorsement and
23 assignment of the lien to a lender that is refinancing the extension
24 of credit;

25 (viii) the owner of the homestead and any
26 spouse of the owner may, within three days after the extension of
27 credit is made, rescind the extension of credit without penalty or

1 charge;

2 (ix) the owner of the homestead and the
3 lender sign a written acknowledgment as to the fair market value of
4 the homestead property on the date the extension of credit is made;
5 and

6 (x) the lender or any holder of the note for
7 the extension of credit shall forfeit all principal and interest of
8 the extension of credit if the lender or holder fails to comply with
9 the lender's or holder's obligations under the extension of credit
10 unless within a reasonable time after the lender or holder is
11 notified by the borrower of the lender's failure to comply the
12 lender:

13 (a) cures the failure to comply by
14 changing any amount, percentage, term, or other provision
15 prohibited by this section to a permitted amount, percentage, term,
16 or other provision and adjusts the account of the borrower to ensure
17 that the borrower is not required to pay more than an amount
18 permitted by this section and is not subject to any other term or
19 provision prohibited by this section; or

20 (b) if the failure to comply cannot be
21 cured by a modification and adjustment described by Subparagraph
22 (x)(a), cures the failure to comply by a refund or credit to the
23 borrower of all fees and charges, other than interest, paid to any
24 person by the borrower in connection with the extension of credit;

25 (7) a reverse mortgage; or

26 (8) the conversion and refinance of a personal
27 property lien secured by a manufactured home to a lien on real

1 property, including the refinance of the purchase price of the
2 manufactured home, the cost of installing the manufactured home on
3 the real property, and the refinance of the purchase price of the
4 real property.

5 SECTION 2. Section 50(f), Article XVI, Texas Constitution,
6 is amended to read as follows:

7 (f) A refinance of debt secured by the homestead, any
8 portion of which is an extension of credit described by Subsection
9 (a)(6) of this section, may not be secured by a valid lien against
10 the homestead unless:

11 (1) the refinance of the debt is an extension of credit
12 described by Subsection (a)(6) or (a)(7) of this section; or

13 (2) the new loan resulting from the refinance of the
14 debt meets all of the following conditions:

15 (A) no valid and enforceable contractual liens or
16 security interests have priority over the lien securing the new
17 loan;

18 (B) the new loan is not closed before the first
19 anniversary of the date the extension of credit described by
20 Subsection (a)(6) of this section was closed; and

21 (C) the new loan does not include the advance of
22 any additional funds other than actual costs and reserves required
23 by the lender in order to make the new loan.

24 SECTION 3. Section 50(g), Article XVI, Texas Constitution,
25 is amended to read as follows:

26 (g) An extension of credit described by Subsection (a)(6) of
27 this section may be secured by a valid lien against homestead

1 property if the extension of credit is not closed before the 12th
2 day after the lender provides the owner with the following written
3 notice on a separate instrument:

4 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
5 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

6 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
7 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
8 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
9 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
10 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

11 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
12 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

13 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
14 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
15 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
16 FAIR MARKET VALUE OF YOUR HOME;

17 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
18 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
19 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

20 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
21 WITH A COURT ORDER;

22 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
23 PERCENT OF THE LOAN AMOUNT;

24 "(F) THE LOAN MAY [~~NOT~~] BE AN OPEN-END ACCOUNT THAT MAY BE
25 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
26 TIME TO TIME;

27 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

1 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

2 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
3 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
4 PRIMARILY FOR THE PRODUCTION OF MILK;

5 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
6 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
7 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
8 HOME;

9 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
10 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
11 GIVEN TIME;

12 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
13 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
14 PERIOD;

15 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
16 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
17 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
18 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
19 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
20 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

21 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
22 TITLE COMPANY, OR AN ATTORNEY AT LAW;

23 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
24 INTEREST AUTHORIZED BY STATUTE;

25 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
26 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
27 CONSTITUTION; AND

1 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
2 THE TEXAS CONSTITUTION MUST:

3 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
4 DEBT EXCEPT A DEBT THAT IS [~~NOT~~] SECURED BY YOUR HOME OR OWED TO
5 ANOTHER [~~DEBT TO THE SAME~~] LENDER;

6 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

7 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
8 HAVE BLANKS LEFT TO BE FILLED IN;

9 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
10 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
11 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

12 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
13 YOU SIGN AT CLOSING;

14 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
15 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
16 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

17 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
18 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
19 THE LIEN, WHICHEVER IS APPROPRIATE;

20 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
21 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

22 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
23 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

24 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
25 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
26 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
27 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, TEXAS

1 CONSTITUTION. ["]

2 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
3 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
4 TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

5 If the discussions with the borrower are conducted primarily
6 in a language other than English, the lender shall, before closing,
7 provide an additional copy of the notice translated into the
8 written language in which the discussions were conducted.

9 SECTION 4. Section 50, Article XVI, Texas Constitution, is
10 amended by adding Subsections (t)-(v) to read as follows:

11 (t) An extension of credit under Subsection (a)(6) that
12 permits an owner to request advances, repay, and reborrow subject
13 to a limit on total principal amount outstanding at one time, is a
14 home equity line of credit and the period during which the owner may
15 request advances is the advance period. For purposes of Subsection
16 (a)(6), the principal amount under a home equity line of credit is
17 the maximum principal amount that may be outstanding at one time and
18 the extension of credit is considered made on the date the credit
19 agreement is executed. A home equity line of credit complies with
20 Subsection (a)(6)(L) if all required periodic payments equal or
21 exceed the amount of accrued interest and required periodic
22 payments after the advance period ends are substantially equal. A
23 lender may not unilaterally amend a home equity line of credit.

24 (u) A refinance of debt under Subsection (f)(2) of this
25 section is considered to be a refinance of a lien against a
26 homestead under Subsection (a)(4) of this section and is not
27 governed by the law specifically applicable to a debt described by

1 Subsection (a)(6) of this section.

2 (v) The legislature may by statute delegate to one or more
3 state agencies the power to interpret Subsections (a)(5)-(a)(7),
4 (e)-(p), (t), and (u) of this section. An act or omission does not
5 violate a provision included in those subsections if the act or
6 omission conforms to an interpretation of the provision that is:

7 (1) in effect at the time of the act or omission; and

8 (2) made by a state agency to which the power of
9 interpretation is delegated as provided by this subsection or by an
10 appellate court of this state or the United States.

11 SECTION 5. This proposed constitutional amendment shall be
12 submitted to the voters at an election to be held November 4, 2003.
13 The ballot shall be printed to permit voting for or against the
14 proposition: "The constitutional amendment authorizing a home
15 equity line of credit, providing for administrative interpretation
16 of home equity lending law, and otherwise relating to the making,
17 refinancing, repayment, and enforcement of home equity loans."

By: Carona S.J.R. No. 42
(In the Senate - Filed March 10, 2003; March 20, 2003, read first time and referred to Committee on Business and Commerce; May 7, 2003, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; May 7, 2003, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.J.R. No. 42

By: Lucio

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to

the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:
 (i) in substantially equal successive periodic [monthly] installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; ~~or~~

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; [and]

(x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if:

(a) the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision;

(b) the extension of credit was not made voluntarily under a written agreement with the consent of each owner and each owner's spouse;

(c) the principal amount of the extension exceeds the amount described under Paragraph (B) of this subdivision on the date the extension of credit is made and the lender fails to send the owner written acknowledgement that the lien is valid only in the amount that does not exceed the permitted percentage;

(d) the extension of credit is secured by additional property other than the homestead and the lender fails to send the owner written acknowledgement that the lien is valid only against the homestead property;

(e) the extension of credit is made when a prior lien described under this subdivision is secured by the homestead and the lender or holder fails to send the owner written acknowledgement that the accrual of interest and all of the owner's obligations under the extension of credit are abated until such

time as the prior lien remains secured by the homestead;

(f) the borrower pays more than an amount permitted by this section and the lender fails to adjust the account of the borrower to ensure that the borrower is not required to pay more than a permitted amount or reimburse the overpayment to the borrower;

(g) the extension of credit includes a term or provision prohibited by this section and the lender fails to change the term or provision to ensure that the borrower is not subject to the prohibited term or provision; or

(h) the lender or holder otherwise fails to:

(1) comply with the lender's or holder's obligations under the extension of credit;

(2) cure the failure to comply under Items (c)-(g) of this subparagraph;

(3) pay the borrower \$1,000; and

(4) offer the borrower the right to refinance the outstanding principal balance of the extension of credit with the lender or holder at no cost to the owner for the remaining term of the loan at the same or lower rate of interest as the original extension of credit with modifications to terms that are necessary to comply with this section; and

(xi) the lender or holder take any action as may be required under Subparagraphs (c)-(h) of this paragraph not later than the 60th day after the date the borrower notifies the lender of the failure to comply ~~[within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply]~~;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

SECTION 2. Subsection (g), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION

50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD

PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; ~~[AND]~~

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS ~~[NOT]~~ SECURED BY YOUR HOME OR OWED TO ANOTHER ~~[DEBT TO THE SAME]~~ LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT

AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

SECTION 3. Section 50, Article XVI, Texas Constitution, is amended by adding Subsections (t) and (u) to read as follows:

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established;

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

SECTION 4. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans."

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR (SJR) SR HB HCR HJR 42
By Senator Carona
(Author/Senate Sponsor)
5/7/03
(date)

We, your Committee on BUSINESS AND COMMERCE, to which was referred the attached measure,
have on May 6, 2003, had the same under consideration and I am instructed to report it
(date of hearing)
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed
☒ the caption remained the same as original measure
☐ the caption changed with adoption of the substitute

☐ do pass as substituted, and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☒ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Troy Fraser, Chairman	<input checked="" type="checkbox"/>			
Senator Kip Averitt, Vice-Chairman	<input checked="" type="checkbox"/>			
Senator Ken Armbrister	<input checked="" type="checkbox"/>			
Senator Kim Brimer			<input checked="" type="checkbox"/>	
Senator Craig Estes	<input checked="" type="checkbox"/>			
Senator Mike Jackson	<input checked="" type="checkbox"/>			
Senator Eddie Lucio	<input checked="" type="checkbox"/>			
Senator Leticia Van de Putte	<input checked="" type="checkbox"/>			
Senator Tommy Williams	<input checked="" type="checkbox"/>			
TOTAL VOTES	8	0	1	0

COMMITTEE ACTION

☒ S260 Considered in public hearing
☒ S270 Testimony taken

Barbara Henderson
COMMITTEE CLERK

Ty Fran
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

SJR 42

SENATE COMMITTEE REPORT

Business & Commerce

April 8, 2003 - 9:00AM

FOR: Pinkus, David (Small Business United of Texas), Austin, TX
Tippets, John (Texas Conference for Homeowners' Rights), Austin, TX

AGAINST: Doggett, Robert (Self), Austin, TX
Henneberger, John (Texas Low Income Housing Information Service), Austin, TX

ON: Walker, Ron (Texas Association of Realtors), Austin, TX

Registering, but not testifying:

FOR: Parker, Gary (First University Credit Union), Waco, TX

AGAINST: Bhatia, Khelan (AARP), Austin, TX
Schneider, Rob (Consumers Union)

ON: Pettijohn, Leslie (Consumer Credit Commissioner), Austin, TX
Morris, Mark (JP Morgan Chase Bank), Austin, TX

ON: Temple, Larry (Texas Mortgage Bankers Association), Austin, TX

Registering, but not testifying:

ON: Sandberg, Eric (Texas Savings and Community Bankers Association), Austin, TX

BILL ANALYSIS

Senate Research Center

C.S.S.J.R. 42
By: Carona
Business & Commerce
5/6/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas homeowners are unable to obtain home equity lines of credit, schedule sub-monthly payment, or refinance a home equity loan with a reverse mortgage loan. There also is no statutory language regarding a lender's ability to correct or cure certain violations of the home equity lien provisions, and lending institutions do not have access to adequate guidelines to properly assess current home equity law. C.S.S.J.R. 42 proposes to amend the Texas Constitution to authorize home equity lines of credit, flexible payments, and the ability to refinance a home equity loan with a reverse mortgage loan. This resolution also establishes provisions for a lender to cure an error in home equity lending. C.S.S.J.R. 42 authorizes the legislature to delegate interpretive authority to one or more state agencies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article XVI, Section 50(a), Texas Constitution, to include in the list of exceptions to the requirement that the homestead of a family, or of a single adult person be, and hereby is, protected from forced sale for the payment of all debts, an extension of credit that is not a form of open-end account that may be debited, or under which credit may be extended, from time to time unless the open-end account is a home equity line of credit;

an extension of credit that is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsection (a)(8), as well as Subsections (a)(1)-(a)(5), of this section; an extension of credit that is scheduled to be repaid in substantially equal successive periodic, rather than monthly installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment, or if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

an extension of credit that is made by a person regulated by this state as a mortgage broker that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside, or the property proposed to secure the loans is located, in a certain area;

an extension of credit that is made on the condition requiring the lender or any holder of the note for the extension of credit to forfeit all principal and interest of the extension of credit under certain circumstances;

an extension of credit that is made on the condition that any action taken by the lender or holder as may be required under Subsection (a)(6)(Q)(x)(c)-(h) of this section not later than the 60th day after the date the borrower notifies the lender of the failure to comply, rather than within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply.

SECTION 2. Amends Article XVI, Section 50(g), Texas Constitution, to include in the written notice required as a precondition to securing an extension of credit described by Subsection (a)(6) of this section by a valid lien against homestead property, prohibiting the loan from being an open-end account that may be debited, or under which credit may be extended, from time to time unless it is a home equity line of credit;

the requirement that loans described by Article XVI, Section 50(a)(6), Texas Constitution, to not require a consumer to apply the proceeds to another debt except a debt that is, rather than is not, secured by the consumer's home or owed to another lender, rather than owed to another debt to the same lender, and to provide that the lender will forfeit all principal and interest if the lender fails to comply with the lender's obligations unless the lender cures the failure to comply as provided by Article XVI, Section 50(a)(6)(Q)(x), Texas Constitution;

if a loan is a home equity line of credit, certain conditions apply;

and the provision that the notice is only a summary of the consumer's rights under the Texas Constitution, that the consumer's rights are governed by Article XVI, Section 50, Texas Constitution, and not by the notice.

SECTION 3. Amends Article XVI, Section 50, Texas Constitution, by adding Subsections (t) and (u), as follows:

(t) Provides that a home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which certain conditions apply.

(u) Authorizes the legislature, by statute, to delegate to one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t) of this section. Provides that an act or omission does not violate a provision included in those subsections if the act or omission conforms to certain interpretations of the provision.

SECTION 4. Requires that this proposed constitutional amendment be submitted to the voters at an election on November 4, 2003. Sets forth the required content of the ballot.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 6, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.),
Committee Report 1st House, Substituted

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.), **As Introduced**

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

MAY 14 2003

By: Carona

S.J.R. No. 42

Substitute the following for S.J.R. No. 42:

By: Lucy

C.S.S.J.R. No. 42

SENATE

☒ JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

BE IT ^SRESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. ^{(Subsection (a))} Section 50(a), Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that: /

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair

market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead; / 3/4

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt

was made for a purpose described by Subsections (a)(1)-(a)(5) or
Subsection (a)(8) of this section;

(L) ^{is} scheduled to be repaid:

(i) in substantially equal successive
periodic [monthly] installments, not more often than every 14
days and not less often than monthly, beginning no later than two
months from the date the extension of credit is made, each of
which equals or exceeds the amount of accrued interest as of the
date of the scheduled installment; or

(ii) if the extension of credit is a home
equity line of credit, in periodic payments described under
Subsection (t)(8) of this section;

Insert
A.A.#2

(M) is closed not before:

(i) the 12th day after the later of the date
that the owner of the homestead submits an application to the
lender for the extension of credit or the date that the lender
provides the owner a copy of the notice prescribed by Subsection
(g) of this section; and

4/5
except a refinance described by Paragraph
(Q)(x)(f) of this subdivision

(ii) the first anniversary of the closing
date of any other extension of credit described by Subsection
(a)(6) of this section secured by the same homestead property;

FA#12
(1)

(N) is closed only at the office of the lender,
an attorney at law, or a title company;

(O) permits a lender to contract for and receive
any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not
been found by a federal regulatory agency to have engaged in the
practice of refusing to make loans because the applicants for the
loans reside or the property proposed to secure the loans is
located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality, or a person approved as a mortgagee by the United States government to make federally insured loans; 5/6

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; [or]

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit; 6/7

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; [^]and

<sup>Insert
F.A.# 12
(2)</sup> (x) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if:

(a) the extension of credit is made by a person other than a person described under ^{Paragraph} ~~Subsection (a)(6)~~ (P) of this ^{subdivision} ~~section~~;

(b) the extension of credit was not made voluntarily under a written agreement with the consent of each owner and each owner's spouse;

(c) the principal amount of the extension exceeds the amount described under ^{Paragraph} ~~Subsection (a)(6)~~ (B) of this ^{subdivision} ~~section~~ on the date the extension of credit is made and the lender fails

to send the owner written acknowledgement that the lien is valid only in the amount that does not exceed the permitted percentage;

(d) the extension of credit is secured by additional property other than the homestead and the lender fails to send the owner written acknowledgement that the lien is valid only against the homestead property;

(e) the extension of credit is made when a prior lien described under ^{this subdivision} ~~Subsection (a) (6)~~ of this section is secured by the homestead and the lender or holder fails to send the owner written acknowledgement that the accrual of interest and all of the owner's obligations under the extension of credit are abated until such time as the prior lien remains secured by the homestead;

(f) the borrower pays more than an amount permitted by this section and the lender fails to adjust the account of the borrower to ensure that the borrower is not required to pay more than a permitted amount or reimburse the overpayment to the borrower;

(g) the extension of credit includes a term or provision prohibited by ^{this} section and the lender fails to change the term or provision to ensure that the borrower is not subject to the prohibited term or provision; or

^{tab as others} (h) the lender or holder otherwise fails to:
(1) comply with the lender's or holder's obligations under the extension of credit;

(2) cure the failure to comply under
^{Items} ~~Subsection (a) (6) (O) (x)~~ (c) - (g) of this ^{subparagraph} section;

(3) pay the borrower \$1,000; and

(4) offer the borrower the right to refinance the outstanding principal balance of the extension of credit with the lender or holder at no cost to the owner for the remaining term of the loan at the same or lower rate of interest as the

~~original extension of credit with modifications to terms that are necessary to comply with this section; and~~

~~(xi) the lender or holder take any action as may be required under ^{Subparagraphs} Subsection (a) (6) (g) (x) (c) - (h) of this ^{paragraph} section not later than the 60th day after the date the borrower notifies the lender of the failure to comply [within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply];~~

] (7) a reverse mortgage; or

] (8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

Insert
F.A.#13 →

3 Subsection (g),
SECTION 50. Section 50 ~~for~~, Article XVI, Texas Constitution,
is amended to read as follows:

(g) An extension of credit described by Subsection (a) (6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

["NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50 (a) (6), ARTICLE XVI, TEXAS CONSTITUTION: [

"SECTION 50 (a) (6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

" (A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD; 10/11

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME

WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN; 11/12

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE; 11/12

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION; [AND]

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS [NOT] SECURED BY YOUR HOME OR OWED TO ANOTHER [~~DEBT TO THE SAME~~] LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE; 12/13

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; [^] AND _v

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, ^{OF THE} TEXAS _^ CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEED^S 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND 3/14

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT."/

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, ⁴~~OF THE~~ TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

SECTION ⁴~~5~~. Section 50, Article XVI, Texas Constitution, is amended by adding Subsections (t) and (u) to read as follows:

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50

percent of the fair market value of the homestead as determined on the date the account is established;

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

4.4.13
SECTION ⁵4. This proposed constitutional amendment shall be submitted to the voters at an election to be held ~~November 4~~ ^{September 13,} 2003. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans."

ADOPTED

MAY 14 2003

Atty. Gen.
Secretary of the Senate

BY: Carona

FLOOR AMENDMENT NO. 12

Amend C.S.S.J.R. No. 42 as follows:

(1) In SECTION 1 of the resolution, in Section 50(a)(6)(M)(ii), Article XVI, Texas Constitution (Committee printing page 2, line ²⁴ 54), between "property" and the semicolon, insert "except a refinance described by Paragraph (Q)(x)(f) of this subdivision".

(2) In SECTION 1 of the resolution, strike Section 50(a)(6)(Q)(x), Article XVI, Texas Constitution (Committee printing page 3, line ²⁰⁶⁻⁸ 46 through page 4, line 29) and substitute the following:

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date ~~[within a reasonable time after]~~ the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) or (I) of this subdivision, if applicable;

Insert (cont)

1 (c) sending the owner a written notice
2 modifying any other amount, percentage, term, or other provision
3 prohibited by this section to a permitted amount, percentage, term,
4 or other provision and adjusting the account of the borrower to
5 ensure that the borrower is not required to pay more than an amount
6 permitted by this section and is not subject to any other term or
7 provision prohibited by this section;

8 (d) delivering the required documents
9 to the borrower if the lender fails to comply with Subparagraph (v)
10 of this paragraph or obtaining the appropriate signatures if the
11 lender fails to comply with Subparagraph (ix) of this paragraph;

12 (e) sending the owner a written
13 acknowledgement, if the failure to comply is prohibited by
14 Paragraph (K) of this subdivision, that the accrual of interest and
15 all of the owner's obligations under the extension of credit are
16 abated while any prior lien prohibited under Paragraph (K) remains
17 secured by the homestead; or

18 (f) if the failure to comply cannot be
19 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
20 failure to comply by a refund or credit to the owner of \$1,000 and
21 offering the owner the right to refinance the extension of credit
22 with the lender or holder for the remaining term of the loan at no
23 cost to the owner on the same terms, including interest, as the
24 original extension of credit with any modifications necessary to
25 comply with this section or on terms on which the owner and the
26 lender or holder otherwise agree that comply with this section; and

27 (xi) the lender or any holder of the note
28 for the extension of credit shall forfeit all principal and
29 interest of the extension of credit if the extension of credit is
30 made by a person other than a person described under Paragraph (P)
31 of this subdivision or if the lien was not created under a written

- 1 agreement with the consent of each owner and each owner's spouse,
- 2 unless each owner and each owner's spouse who did not initially
- 3 consent subsequently consents;

ADOPTED

MAY 14 2003

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 13

BY: Carona

1 Amend C.S.S.J.R. 42 by adding the following appropriately
2 numbered SECTION to the resolution and renumbering subsequent
3 SECTIONS accordingly:

4 SECTION ^{Subsection (4),} ~~2~~ ¹ Section 50~~(f)~~, Article XVI, Texas Constitution,
5 is amended to read as follows:

6 (f) A refinance of debt secured by the homestead, any
7 portion of which is an extension of credit described by Subsection
8 (a)(6) of this section, may not be secured by a valid lien against
9 the homestead unless the refinance of the debt is an extension of
10 credit described by Subsection (a)(6) or (a)(7) of this section.

Engrossed May 14, 2003

Mandi Cleland

Engrossing Clerk

I certify this to be a true and correct
copy of the indicated document as
referred or transmitted to committee.

Chief Clerk of the House

By: Carona
(Solomons)

S.J.R. No. 42

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new

1 improvements thereon, if contracted for in writing, or work and
2 material used to repair or renovate existing improvements thereon
3 if:

4 (A) the work and material are contracted for in
5 writing, with the consent of both spouses, in the case of a family
6 homestead, given in the same manner as is required in making a sale
7 and conveyance of the homestead;

8 (B) the contract for the work and material is not
9 executed by the owner or the owner's spouse before the fifth day
10 after the owner makes written application for any extension of
11 credit for the work and material, unless the work and material are
12 necessary to complete immediate repairs to conditions on the
13 homestead property that materially affect the health or safety of
14 the owner or person residing in the homestead and the owner of the
15 homestead acknowledges such in writing;

16 (C) the contract for the work and material
17 expressly provides that the owner may rescind the contract without
18 penalty or charge within three days after the execution of the
19 contract by all parties, unless the work and material are necessary
20 to complete immediate repairs to conditions on the homestead
21 property that materially affect the health or safety of the owner or
22 person residing in the homestead and the owner of the homestead
23 acknowledges such in writing; and

24 (D) the contract for the work and material is
25 executed by the owner and the owner's spouse only at the office of a
26 third-party lender making an extension of credit for the work and
27 material, an attorney at law, or a title company;

1 (6) an extension of credit that:

2 (A) is secured by a voluntary lien on the
3 homestead created under a written agreement with the consent of
4 each owner and each owner's spouse;

5 (B) is of a principal amount that when added to
6 the aggregate total of the outstanding principal balances of all
7 other indebtedness secured by valid encumbrances of record against
8 the homestead does not exceed 80 percent of the fair market value of
9 the homestead on the date the extension of credit is made;

10 (C) is without recourse for personal liability
11 against each owner and the spouse of each owner, unless the owner or
12 spouse obtained the extension of credit by actual fraud;

13 (D) is secured by a lien that may be foreclosed
14 upon only by a court order;

15 (E) does not require the owner or the owner's
16 spouse to pay, in addition to any interest, fees to any person that
17 are necessary to originate, evaluate, maintain, record, insure, or
18 service the extension of credit that exceed, in the aggregate,
19 three percent of the original principal amount of the extension of
20 credit;

21 (F) is not a form of open-end account that may be
22 debited from time to time or under which credit may be extended from
23 time to time unless the open-end account is a home equity line of
24 credit;

25 (G) is payable in advance without penalty or
26 other charge;

27 (H) is not secured by any additional real or

1 personal property other than the homestead;

2 (I) is not secured by homestead property
3 designated for agricultural use as provided by statutes governing
4 property tax, unless such homestead property is used primarily for
5 the production of milk;

6 (J) may not be accelerated because of a decrease
7 in the market value of the homestead or because of the owner's
8 default under other indebtedness not secured by a prior valid
9 encumbrance against the homestead;

10 (K) is the only debt secured by the homestead at
11 the time the extension of credit is made unless the other debt was
12 made for a purpose described by Subsections (a)(1)-(a)(5) or
13 Subsection (a)(8) of this section;

14 (L) is scheduled to be repaid:

15 (i) in substantially equal successive
16 periodic [monthly] installments, not more often than every 14 days
17 and not less often than monthly, beginning no later than two months
18 from the date the extension of credit is made, each of which equals
19 or exceeds the amount of accrued interest as of the date of the
20 scheduled installment; or

21 (ii) if the extension of credit is a home
22 equity line of credit, in periodic payments described under
23 Subsection (t)(8) of this section;

24 (M) is closed not before:

25 (i) the 12th day after the later of the date
26 that the owner of the homestead submits an application to the lender
27 for the extension of credit or the date that the lender provides the

1 owner a copy of the notice prescribed by Subsection (g) of this
2 section; and

3 (ii) the first anniversary of the closing
4 date of any other extension of credit described by Subsection
5 (a)(6) of this section secured by the same homestead property,
6 except a refinance described by Paragraph (Q)(x)(f) of this
7 subdivision;

8 (N) is closed only at the office of the lender, an
9 attorney at law, or a title company;

10 (O) permits a lender to contract for and receive
11 any fixed or variable rate of interest authorized under statute;

12 (P) is made by one of the following that has not
13 been found by a federal regulatory agency to have engaged in the
14 practice of refusing to make loans because the applicants for the
15 loans reside or the property proposed to secure the loans is located
16 in a certain area:

17 (i) a bank, savings and loan association,
18 savings bank, or credit union doing business under the laws of this
19 state or the United States;

20 (ii) a federally chartered lending
21 instrumentality or a person approved as a mortgagee by the United
22 States government to make federally insured loans;

23 (iii) a person licensed to make regulated
24 loans, as provided by statute of this state;

25 (iv) a person who sold the homestead
26 property to the current owner and who provided all or part of the
27 financing for the purchase; [~~or~~]

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender

1 cancel and return the promissory note to the owner of the homestead
2 and give the owner, in recordable form, a release of the lien
3 securing the extension of credit or a copy of an endorsement and
4 assignment of the lien to a lender that is refinancing the extension
5 of credit;

6 (viii) the owner of the homestead and any
7 spouse of the owner may, within three days after the extension of
8 credit is made, rescind the extension of credit without penalty or
9 charge;

10 (ix) the owner of the homestead and the
11 lender sign a written acknowledgment as to the fair market value of
12 the homestead property on the date the extension of credit is made;
13 ~~[and]~~

14 (x) except as provided by Subparagraph (ix)
15 of this paragraph, the lender or any holder of the note for the
16 extension of credit shall forfeit all principal and interest of the
17 extension of credit if the lender or holder fails to comply with the
18 lender's or holder's obligations under the extension of credit and
19 fails to correct the failure to comply not later than the 60th day
20 after the date ~~[within a reasonable time after]~~ the lender or holder
21 is notified by the borrower of the lender's failure to comply by:

22 (a) paying to the owner an amount
23 equal to any overcharge paid by the owner under or related to the
24 extension of credit if the owner has paid an amount that exceeds an
25 amount stated in the applicable Paragraph (E), (G), or (O) of this
26 subdivision;

27 (b) sending the owner a written

1 acknowledgement that the lien is valid only in the amount that the
2 extension of credit does not exceed the percentage described by
3 Paragraph (B) of this subdivision, if applicable, or is not secured
4 by property described under Paragraph (H) or (I) of this
5 subdivision, if applicable;

6 (c) sending the owner a written notice
7 modifying any other amount, percentage, term, or other provision
8 prohibited by this section to a permitted amount, percentage, term,
9 or other provision and adjusting the account of the borrower to
10 ensure that the borrower is not required to pay more than an amount
11 permitted by this section and is not subject to any other term or
12 provision prohibited by this section;

13 (d) delivering the required documents
14 to the borrower if the lender fails to comply with Subparagraph (v)
15 of this paragraph or obtaining the appropriate signatures if the
16 lender fails to comply with Subparagraph (ix) of this paragraph;

17 (e) sending the owner a written
18 acknowledgement, if the failure to comply is prohibited by
19 Paragraph (K) of this subdivision, that the accrual of interest and
20 all of the owner's obligations under the extension of credit are
21 abated while any prior lien prohibited under Paragraph (K) remains
22 secured by the homestead; or

23 (f) if the failure to comply cannot be
24 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
25 failure to comply by a refund or credit to the owner of \$1,000 and
26 offering the owner the right to refinance the extension of credit
27 with the lender or holder for the remaining term of the loan at no

cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

SECTION 2. Subsection (f), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

SECTION 3. Subsection (g), Section 50, Article XVI, Texas

1 Constitution, is amended to read as follows:

2 (g) An extension of credit described by Subsection (a)(6) of
3 this section may be secured by a valid lien against homestead
4 property if the extension of credit is not closed before the 12th
5 day after the lender provides the owner with the following written
6 notice on a separate instrument:

7 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
8 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

9 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
10 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
11 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
12 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
13 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

14 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
15 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

16 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
17 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
18 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
19 FAIR MARKET VALUE OF YOUR HOME;

20 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
21 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
22 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

23 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
24 WITH A COURT ORDER;

25 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
26 PERCENT OF THE LOAN AMOUNT;

27 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE

1 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
2 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

3 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

4 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

5 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
6 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
7 PRIMARILY FOR THE PRODUCTION OF MILK;

8 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
9 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
10 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
11 HOME;

12 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
13 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
14 GIVEN TIME;

15 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
16 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
17 PERIOD;

18 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
19 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
20 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
21 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
22 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
23 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

24 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
25 TITLE COMPANY, OR AN ATTORNEY AT LAW;

26 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
27 INTEREST AUTHORIZED BY STATUTE;

1 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
2 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
3 CONSTITUTION; ~~[AND]~~

4 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
5 THE TEXAS CONSTITUTION MUST:

6 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
7 DEBT EXCEPT A DEBT THAT IS ~~[NOT]~~ SECURED BY YOUR HOME OR OWED TO
8 ANOTHER ~~[DEBT TO THE SAME]~~ LENDER;

9 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

10 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
11 HAVE BLANKS LEFT TO BE FILLED IN;

12 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
13 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
14 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

15 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
16 YOU SIGN AT CLOSING;

17 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
18 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
19 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

20 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
21 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
22 THE LIEN, WHICHEVER IS APPROPRIATE;

23 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
24 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

25 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
26 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

27 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL

1 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
2 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
3 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
4 CONSTITUTION; AND

5 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

6 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND
7 REBORROW MONEY UNDER THE LINE OF CREDIT;

8 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN
9 AN AMOUNT OF AT LEAST \$4,000;

10 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
11 SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE
12 LINE OF CREDIT;

13 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND
14 COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE
15 LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

16 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE
17 EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY
18 NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE
19 DATE THE LINE OF CREDIT IS ESTABLISHED;

20 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT
21 AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR
22 HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED,
23 YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT
24 UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE;
25 AND

26 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS
27 OF THE LINE OF CREDIT.

1 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
2 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
3 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

4 If the discussions with the borrower are conducted primarily
5 in a language other than English, the lender shall, before closing,
6 provide an additional copy of the notice translated into the
7 written language in which the discussions were conducted.

8 SECTION 4. Section 50, Article XVI, Texas Constitution, is
9 amended by adding Subsections (t) and (u) to read as follows:

10 (t) A home equity line of credit is a form of an open-end
11 account that may be debited from time to time, under which credit
12 may be extended from time to time and under which:

13 (1) the owner requests advances, repays money, and
14 reborrows money;

15 (2) any single debit or advance is not less than
16 \$4,000;

17 (3) the owner does not use a credit card, debit card,
18 preprinted solicitation check, or similar device to obtain an
19 advance;

20 (4) any fees described by Subsection (a)(6)(E) of this
21 section are charged and collected only at the time the extension of
22 credit is established and no fee is charged or collected in
23 connection with any debit or advance;

24 (5) the maximum principal amount that may be extended
25 under the account, when added to the aggregate total of the
26 outstanding principal balances of all indebtedness secured by the
27 homestead on the date the extension of credit is established, does

1 not exceed an amount described under Subsection (a)(6)(B) of this
2 section;

3 (6) no additional debits or advances are made if the
4 total principal amount outstanding exceeds an amount equal to 50
5 percent of the fair market value of the homestead as determined on
6 the date the account is established;

7 (7) the lender or holder may not unilaterally amend
8 the extension of credit; and

9 (8) repayment is to be made in regular periodic
10 installments, not more often than every 14 days and not less often
11 than monthly, beginning not later than two months from the date the
12 extension of credit is established, and:

13 (A) during the period during which the owner may
14 request advances, each installment equals or exceeds the amount of
15 accrued interest; and

16 (B) after the period during which the owner may
17 request advances, installments are substantially equal.

18 (u) The legislature may by statute delegate one or more
19 state agencies the power to interpret Subsections (a)(5)-(a)(7),
20 (e)-(p), and (t), of this section. An act or omission does not
21 violate a provision included in those subsections if the act or
22 omission conforms to an interpretation of the provision that is:

23 (1) in effect at the time of the act or omission; and

24 (2) made by a state agency to which the power of
25 interpretation is delegated as provided by this subsection or by an
26 appellate court of this state or the United States.

27 SECTION 5. This proposed constitutional amendment shall be

1 submitted to the voters at an election to be held November 4, 2003.
2 The ballot shall be printed to permit voting for or against the
3 proposition: "The constitutional amendment authorizing a home
4 equity line of credit, providing for administrative interpretation
5 of home equity lending law, and otherwise relating to the making,
6 refinancing, repayment, and enforcement of home equity loans."

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 6, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.),
Committee Report 1st House, Substituted

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.), **As Introduced**

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

HOUSE COMMITTEE REPORT

03 MAY 19 PM 6:50
HOUSE OF REPRESENTATIVES

1st Printing

By: Carona
(Solomons)

S.J.R. No. 42

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new

1 improvements thereon, if contracted for in writing, or work and
2 material used to repair or renovate existing improvements thereon
3 if:

4 (A) the work and material are contracted for in
5 writing, with the consent of both spouses, in the case of a family
6 homestead, given in the same manner as is required in making a sale
7 and conveyance of the homestead;

8 (B) the contract for the work and material is not
9 executed by the owner or the owner's spouse before the fifth day
10 after the owner makes written application for any extension of
11 credit for the work and material, unless the work and material are
12 necessary to complete immediate repairs to conditions on the
13 homestead property that materially affect the health or safety of
14 the owner or person residing in the homestead and the owner of the
15 homestead acknowledges such in writing;

16 (C) the contract for the work and material
17 expressly provides that the owner may rescind the contract without
18 penalty or charge within three days after the execution of the
19 contract by all parties, unless the work and material are necessary
20 to complete immediate repairs to conditions on the homestead
21 property that materially affect the health or safety of the owner or
22 person residing in the homestead and the owner of the homestead
23 acknowledges such in writing; and

24 (D) the contract for the work and material is
25 executed by the owner and the owner's spouse only at the office of a
26 third-party lender making an extension of credit for the work and
27 material, an attorney at law, or a title company;

1 (6) an extension of credit that:

2 (A) is secured by a voluntary lien on the
3 homestead created under a written agreement with the consent of
4 each owner and each owner's spouse;

5 (B) is of a principal amount that when added to
6 the aggregate total of the outstanding principal balances of all
7 other indebtedness secured by valid encumbrances of record against
8 the homestead does not exceed 80 percent of the fair market value of
9 the homestead on the date the extension of credit is made;

10 (C) is without recourse for personal liability
11 against each owner and the spouse of each owner, unless the owner or
12 spouse obtained the extension of credit by actual fraud;

13 (D) is secured by a lien that may be foreclosed
14 upon only by a court order;

15 (E) does not require the owner or the owner's
16 spouse to pay, in addition to any interest, fees to any person that
17 are necessary to originate, evaluate, maintain, record, insure, or
18 service the extension of credit that exceed, in the aggregate,
19 three percent of the original principal amount of the extension of
20 credit;

21 (F) is not a form of open-end account that may be
22 debited from time to time or under which credit may be extended from
23 time to time unless the open-end account is a home equity line of
24 credit;

25 (G) is payable in advance without penalty or
26 other charge;

27 (H) is not secured by any additional real or

1 personal property other than the homestead;

2 (I) is not secured by homestead property
3 designated for agricultural use as provided by statutes governing
4 property tax, unless such homestead property is used primarily for
5 the production of milk;

6 (J) may not be accelerated because of a decrease
7 in the market value of the homestead or because of the owner's
8 default under other indebtedness not secured by a prior valid
9 encumbrance against the homestead;

10 (K) is the only debt secured by the homestead at
11 the time the extension of credit is made unless the other debt was
12 made for a purpose described by Subsections (a)(1)-(a)(5) or
13 Subsection (a)(8) of this section;

14 (L) is scheduled to be repaid:

15 (i) in substantially equal successive
16 periodic [monthly] installments, not more often than every 14 days
17 and not less often than monthly, beginning no later than two months
18 from the date the extension of credit is made, each of which equals
19 or exceeds the amount of accrued interest as of the date of the
20 scheduled installment; or

21 (ii) if the extension of credit is a home
22 equity line of credit, in periodic payments described under
23 Subsection (t)(8) of this section;

24 (M) is closed not before:

25 (i) the 12th day after the later of the date
26 that the owner of the homestead submits an application to the lender
27 for the extension of credit or the date that the lender provides the

owner a copy of the notice prescribed by Subsection (g) of this section; and

(ii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; [~~or~~]

1 (v) a person who is related to the homestead
2 property owner within the second degree of affinity or
3 consanguinity; or

4 (vi) a person regulated by this state as a
5 mortgage broker; and

6 (Q) is made on the condition that:

7 (i) the owner of the homestead is not
8 required to apply the proceeds of the extension of credit to repay
9 another debt except debt secured by the homestead or debt to another
10 lender;

11 (ii) the owner of the homestead not assign
12 wages as security for the extension of credit;

13 (iii) the owner of the homestead not sign
14 any instrument in which blanks are left to be filled in;

15 (iv) the owner of the homestead not sign a
16 confession of judgment or power of attorney to the lender or to a
17 third person to confess judgment or to appear for the owner in a
18 judicial proceeding;

19 (v) the lender, at the time the extension of
20 credit is made, provide the owner of the homestead a copy of all
21 documents signed by the owner related to the extension of credit;

22 (vi) the security instruments securing the
23 extension of credit contain a disclosure that the extension of
24 credit is the type of credit defined by Section 50(a)(6), Article
25 XVI, Texas Constitution;

26 (vii) within a reasonable time after
27 termination and full payment of the extension of credit, the lender

1 cancel and return the promissory note to the owner of the homestead
2 and give the owner, in recordable form, a release of the lien
3 securing the extension of credit or a copy of an endorsement and
4 assignment of the lien to a lender that is refinancing the extension
5 of credit;

6 (viii) the owner of the homestead and any
7 spouse of the owner may, within three days after the extension of
8 credit is made, rescind the extension of credit without penalty or
9 charge;

10 (ix) the owner of the homestead and the
11 lender sign a written acknowledgment as to the fair market value of
12 the homestead property on the date the extension of credit is made;
13 ~~[and]~~

14 (x) except as provided by Subparagraph (ix)
15 of this paragraph, the lender or any holder of the note for the
16 extension of credit shall forfeit all principal and interest of the
17 extension of credit if the lender or holder fails to comply with the
18 lender's or holder's obligations under the extension of credit and
19 fails to correct the failure to comply not later than the 60th day
20 after the date ~~[within a reasonable time after]~~ the lender or holder
21 is notified by the borrower of the lender's failure to comply by:

22 (a) paying to the owner an amount
23 equal to any overcharge paid by the owner under or related to the
24 extension of credit if the owner has paid an amount that exceeds an
25 amount stated in the applicable Paragraph (E), (G), or (O) of this
26 subdivision;

27 (b) sending the owner a written

acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) or (I) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no

cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and
(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

SECTION 2. Subsection (f), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

SECTION 3. Subsection (g), Section 50, Article XVI, Texas

1 Constitution, is amended to read as follows:

2 (g) An extension of credit described by Subsection (a)(6) of
3 this section may be secured by a valid lien against homestead
4 property if the extension of credit is not closed before the 12th
5 day after the lender provides the owner with the following written
6 notice on a separate instrument:

7 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
8 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

9 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
10 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
11 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
12 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
13 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

14 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
15 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

16 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
17 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
18 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
19 FAIR MARKET VALUE OF YOUR HOME;

20 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
21 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
22 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

23 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
24 WITH A COURT ORDER;

25 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
26 PERCENT OF THE LOAN AMOUNT;

27 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE

1 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
2 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

3 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

4 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

5 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
6 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
7 PRIMARILY FOR THE PRODUCTION OF MILK;

8 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
9 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
10 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
11 HOME;

12 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
13 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
14 GIVEN TIME;

15 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
16 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
17 PERIOD;

18 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
19 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
20 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
21 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
22 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
23 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

24 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
25 TITLE COMPANY, OR AN ATTORNEY AT LAW;

26 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
27 INTEREST AUTHORIZED BY STATUTE;

1 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
2 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
3 CONSTITUTION; ~~[AND]~~

4 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
5 THE TEXAS CONSTITUTION MUST:

6 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
7 DEBT EXCEPT A DEBT THAT IS ~~[NOT]~~ SECURED BY YOUR HOME OR OWED TO
8 ANOTHER ~~[DEBT TO THE SAME]~~ LENDER;

9 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

10 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
11 HAVE BLANKS LEFT TO BE FILLED IN;

12 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
13 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
14 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

15 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
16 YOU SIGN AT CLOSING;

17 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
18 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
19 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

20 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
21 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
22 THE LIEN, WHICHEVER IS APPROPRIATE;

23 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
24 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

25 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
26 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

27 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL

1 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
2 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
3 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
4 CONSTITUTION; AND

5 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

6 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND
7 REBORROW MONEY UNDER THE LINE OF CREDIT;

8 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN
9 AN AMOUNT OF AT LEAST \$4,000;

10 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
11 SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE
12 LINE OF CREDIT;

13 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND
14 COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE
15 LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

16 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE
17 EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY
18 NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE
19 DATE THE LINE OF CREDIT IS ESTABLISHED;

20 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT
21 AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR
22 HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED,
23 YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT
24 UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE;
25 AND

26 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS
27 OF THE LINE OF CREDIT.

1 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
2 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
3 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

4 If the discussions with the borrower are conducted primarily
5 in a language other than English, the lender shall, before closing,
6 provide an additional copy of the notice translated into the
7 written language in which the discussions were conducted.

8 SECTION 4. Section 50, Article XVI, Texas Constitution, is
9 amended by adding Subsections (t) and (u) to read as follows:

10 (t) A home equity line of credit is a form of an open-end
11 account that may be debited from time to time, under which credit
12 may be extended from time to time and under which:

13 (1) the owner requests advances, repays money, and
14 reborrows money;

15 (2) any single debit or advance is not less than
16 \$4,000;

17 (3) the owner does not use a credit card, debit card,
18 preprinted solicitation check, or similar device to obtain an
19 advance;

20 (4) any fees described by Subsection (a)(6)(E) of this
21 section are charged and collected only at the time the extension of
22 credit is established and no fee is charged or collected in
23 connection with any debit or advance;

24 (5) the maximum principal amount that may be extended
25 under the account, when added to the aggregate total of the
26 outstanding principal balances of all indebtedness secured by the
27 homestead on the date the extension of credit is established, does

1 not exceed an amount described under Subsection (a)(6)(B) of this
2 section;

3 (6) no additional debits or advances are made if the
4 total principal amount outstanding exceeds an amount equal to 50
5 percent of the fair market value of the homestead as determined on
6 the date the account is established;

7 (7) the lender or holder may not unilaterally amend
8 the extension of credit; and

9 (8) repayment is to be made in regular periodic
10 installments, not more often than every 14 days and not less often
11 than monthly, beginning not later than two months from the date the
12 extension of credit is established, and:

13 (A) during the period during which the owner may
14 request advances, each installment equals or exceeds the amount of
15 accrued interest; and

16 (B) after the period during which the owner may
17 request advances, installments are substantially equal.

18 (u) The legislature may by statute delegate one or more
19 state agencies the power to interpret Subsections (a)(5)-(a)(7),
20 (e)-(p), and (t), of this section. An act or omission does not
21 violate a provision included in those subsections if the act or
22 omission conforms to an interpretation of the provision that is:

23 (1) in effect at the time of the act or omission; and

24 (2) made by a state agency to which the power of
25 interpretation is delegated as provided by this subsection or by an
26 appellate court of this state or the United States.

27 SECTION 5. This proposed constitutional amendment shall be

S.J.R. No. 42

1 submitted to the voters at an election to be held November 4, 2003.
2 The ballot shall be printed to permit voting for or against the
3 proposition: "The constitutional amendment authorizing a home
4 equity line of credit, providing for administrative interpretation
5 of home equity lending law, and otherwise relating to the making,
6 refinancing, repayment, and enforcement of home equity loans."

The Honorable Tom Craddick
Speaker of the House of Representatives

5/19/03
(date)

We, your COMMITTEE ON FINANCIAL INSTITUTIONS

☒ do pass, without amendment.

☐ do pass, with amendment(s).

☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

☒ yes ☐ no A fiscal note was requested.

☐ yes ☒ no A criminal justice policy impact statement was requested.

☐ yes ☒ no An equalized educational funding impact statement was requested.

☐ yes ☒ no An actuarial analysis was requested.

☐ yes ☒ no A water development policy impact statement was requested.

☐ yes ☒ no A tax equity note was requested.

☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

Co-Sponsors: _____

[illegible]

Total	<u>5</u>	aye
	<u>1</u>	nay
	<u>0</u>	present, not voting
	<u>1</u>	absent

B. A. Hanson
CHAIR

BILL ANALYSIS

S.J.R. 42
By: Carona
Financial Institutions
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Constitution prohibits the forced sale of a homestead except for very limited purposes, including the non-payment of taxes or a valid lien secured by the homestead. Texans have been able to borrow against the equity in their homes and use the funds for any purpose since 1998, when a constitutional amendment authorizing home equity loans took effect. Unlike a first lien, a home equity loan:

- May not be foreclosed upon except by a court order;
- Is without recourse for personal liability unless it was fraudulently obtained;
- May not be refinanced within one year;
- May not have a principal in excess of 80 percent of the value of the home less any outstanding principal balances of any other valid liens on the homestead;
- May not be accelerated because of a decrease in the homestead's market value or the owner's default on another debt; and
- May not contain fees, over any interest, in excess of 3 percent of the principal.

Currently, a home equity loan must be a closed-end debt, which is repaid in substantially equal monthly payments over a specific length of time. A home equity loan may be refinanced only as a home equity loan. In other words, any refinancing of debts secured by the homestead which include a home equity loan must be a home equity loan, not a first lien, under the Constitution.

The Constitution provides that the lender forfeits all principal and interest if a failure to comply with all the lender's obligations is not corrected in a reasonable time. The "cure process" is not otherwise described, either in the Constitution or in statute. Furthermore, no state agency has the authority to interpret home equity law, leaving the resolution of questions over the meaning of the law exclusively to the judiciary. This and other limitations placed on home equity lending in Texas may result in fewer choices and higher interest costs for homeowners.

S.J.R. 42 addresses these issues by authorizing home equity lines of credit, allowing payments to be made on a biweekly basis, clarifying the cure process, and permitting the Legislature to authorize state agencies to interpret constitutional provisions related to home equity lending.

RULEMAKING AUTHORITY

It is the committee's opinion that this joint resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.J.R. 42 amends Sections 50(a), Article XVI, Texas Constitution to establish a home equity line of credit. The measure adds new Section 50(t) to Article XVI, Texas Constitution, to define a home equity line of credit as a form of open-end account which may be extended from time to time under certain conditions. A home equity line of credit is limited to a total principal amount of up to 50 percent of the fair market value of the homestead. A lender must charge all fees related to a home equity line of credit at the time credit is extended and may not charge any fees to the homeowner in connection with any debit or advance. No single debits or advances may be less than \$4,000, and no debit or advance is permitted through the use of a credit card, debit card, preprinted solicitation check, or similar device. The lender may not unilaterally amend a home equity line of credit. The measure provides for the periodic repayment and reborrowing of a home equity line of credit.

The measure permits a borrower to make regularly scheduled payments on a home equity loan every two weeks, but not less often than monthly. The measure deletes the current requirement that repayments be made on a monthly basis.

S.J.R. 42 establishes a specific series of provisions through which a lender may cure most failures to comply with the lender's obligations under the home equity provisions of the Constitution. The lender shall forfeit all principal and interest of a home equity loan if the lender fails to correct its failure to comply within 60 days of being notified by:

- Paying the owner an amount equal to any overcharge paid by the owner, if the owner paid an amount in excess of those authorized by law;
- Sending the owner an acknowledgment that the lien is valid only in an amount that does not exceed the 80 percent cap;
- Sending the owner an acknowledgment that the accrual of interest and all of the owner's obligations under the home equity loan are abated while any prior lien, the presence of which prevents a home equity loan from being made, remains secured by the homestead;
- Sending the owner an acknowledgment that the lien is not secured by real or personal property that is not the homestead or by real property used for most agricultural uses;
- Sending the owner a written notice modifying any other prohibited amount, percentage, term, or other provision to a permitted term and adjusting the owner's account accordingly;
- Providing the owner with required documents, if the lender failed to provide the owner with all signed copies;
- Obtaining required signatures, if the lender failed to obtain a signature on a statement of the fair market value of the homestead; or
- If the failure to comply cannot be cured by any of the above means, offering a refund or credit to the homeowner equal to \$1,000 and offering the homeowner the right to refinance at no cost to the homeowner with any modifications necessary to cure the failure to comply.

However, the lender or any holder of the note shall forfeit all principal and interest for the home equity loan if it was made by an unauthorized person or if it was not created under a written agreement with the consent of each owner and each owner's spouse, unless such individuals subsequently consent. The measure deletes the current requirement that the failure be cured in a reasonable period of time.

The measure permits a home equity loan to be refinanced before the first anniversary of its closing date in order to satisfy the lender's ability to cure a defect in the loan. The measure adds a person regulated by this state as a mortgage broker to the list of persons who are permitted to make a home equity loan. The measure permits a home equity loan to be secured by a manufactured home which has been converted to real property.

S.J.R. 42 amends Section 50(f), Article XVI, Texas Constitution to permit the refinancing of a home equity loan as a reverse mortgage.

The measure amends Section 50(g), Article XVI, Texas Constitution to make conforming changes to the notice that must be provided to a borrower 12 days before a home equity loan must be closed. The measure adds a statement to the notice declaring that the notice is only a summary of the homeowner's rights under the Texas Constitution.

S.J.R. 42 adds new Section 50(u) to Article XVI, Texas Constitution to permit the Legislature by statute to delegate to one or more state agencies the power to interpret certain constitutional provisions relating to home equity lending. An act or omission does not violate such a provision if the act or omission conforms to an interpretation that is in effect at the time of the act or omission and made by a state agency to which the power of interpretation is so delegated or by an appellate court of this state or the United States.

FOR ELECTION

The proposed constitutional amendment would be submitted to the voters at an election to be held November 4, 2003.

SUMMARY OF COMMITTEE ACTION

SJR 42

May 19, 2003

upon lunch recess

Considered in formal meeting

Reported favorably without amendment(s)

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 19, 2003

TO: Honorable Burt R. Solomons, Chair, House Committee on Financial Institutions

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.), **As Engrossed**

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 6, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: **SJR42** by Carona (proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.),
Committee Report 1st House, Substituted

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.), **As Introduced**

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

SJR42-Second Reading

<u>AMENDMENT#</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Solomons	Amendment	Adopted
2	Wolens	Amendment	Adopted
3	Denny	Amendment	Adopted



ADOPTED

MAY 24 2003

Robert Hanes
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 1

BY:

S. Hanes

- 1 ✓ Amend S.J.R. 42 on page 7, line 14, by striking "Subparagraph
2 (ix)" and substituting "Subparagraph (xi)".

see Fl. Am. # 12 p. 1, l. 11

ADOPTED



MAY 24 2003

Robert H. Hargis
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 2

BY: Wolens

Amend S.J.R. No. 42 by striking Section 50(a)(6)(M), Article XVI, Texas Constitution, and substituting the following:

Insert
H.A.#2
at
p.4

§§§ (M) is closed not before:
§§§ (i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section; and

§§§ (ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

§§§ (iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property;

4/3

from HCR277

except a refinance described by
Paragraph (Q)(x)(f) of this
subdivision

H.A.#2 5-29-03

then 5/29

redo 5-31-03
Bee

ADOPTED



MAY 24 2003

Robert Haney
Chief Clerk
House of Representatives

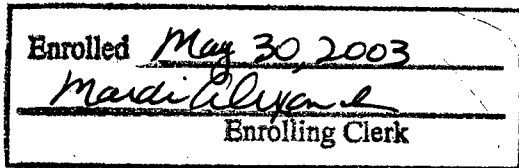
FLOOR AMENDMENT NO. 3

BY: *Denny*

✓✓

1 Amend S.J.R. No. 42 in SECTION 5 of the resolution (House
p. 13 2 committee printing page 16, line 1) by striking "November 4, 2003"
3 and substituting "September 13, 2003".

*H. Am #3 5-29-03
after S/O
BAW Redo 5-31-03, etc*



S.J.R. No. 42

SENATE JOINT RESOLUTION

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and

1 material used to repair or renovate existing improvements thereon
2 if:

3 (A) the work and material are contracted for in
4 writing, with the consent of both spouses, in the case of a family
5 homestead, given in the same manner as is required in making a sale
6 and conveyance of the homestead;

7 (B) the contract for the work and material is not
8 executed by the owner or the owner's spouse before the fifth day
9 after the owner makes written application for any extension of
10 credit for the work and material, unless the work and material are
11 necessary to complete immediate repairs to conditions on the
12 homestead property that materially affect the health or safety of
13 the owner or person residing in the homestead and the owner of the
14 homestead acknowledges such in writing;

15 (C) the contract for the work and material
16 expressly provides that the owner may rescind the contract without
17 penalty or charge within three days after the execution of the
18 contract by all parties, unless the work and material are necessary
19 to complete immediate repairs to conditions on the homestead
20 property that materially affect the health or safety of the owner or
21 person residing in the homestead and the owner of the homestead
22 acknowledges such in writing; and

23 (D) the contract for the work and material is
24 executed by the owner and the owner's spouse only at the office of a
25 third-party lender making an extension of credit for the work and
26 material, an attorney at law, or a title company;

27 (6) an extension of credit that:

1 (A) is secured by a voluntary lien on the
2 homestead created under a written agreement with the consent of
3 each owner and each owner's spouse;

4 (B) is of a principal amount that when added to
5 the aggregate total of the outstanding principal balances of all
6 other indebtedness secured by valid encumbrances of record against
7 the homestead does not exceed 80 percent of the fair market value of
8 the homestead on the date the extension of credit is made;

9 (C) is without recourse for personal liability
10 against each owner and the spouse of each owner, unless the owner or
11 spouse obtained the extension of credit by actual fraud;

12 (D) is secured by a lien that may be foreclosed
13 upon only by a court order;

14 (E) does not require the owner or the owner's
15 spouse to pay, in addition to any interest, fees to any person that
16 are necessary to originate, evaluate, maintain, record, insure, or
17 service the extension of credit that exceed, in the aggregate,
18 three percent of the original principal amount of the extension of
19 credit;

20 (F) is not a form of open-end account that may be
21 debited from time to time or under which credit may be extended from
22 time to time unless the open-end account is a home equity line of
23 credit;

24 (G) is payable in advance without penalty or
25 other charge;

26 (H) is not secured by any additional real or
27 personal property other than the homestead;

(I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic [monthly] installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this

1 section; ~~and~~

2 (ii) one business day after the date that
3 the owner of the homestead receives a final itemized disclosure of
4 the actual fees, points, interest, costs, and charges that will be
5 charged at closing. If a bona fide emergency or another good cause
6 exists and the lender obtains the written consent of the owner, the
7 lender may provide the documentation to the owner or the lender may
8 modify previously provided documentation on the date of closing;
9 and

10 (iii) the first anniversary of the closing
11 date of any other extension of credit described by Subsection
12 (a)(6) of this section secured by the same homestead property,
13 except a refinance described by Paragraph (Q)(x)(f) of this
14 subdivision;

15 (N) is closed only at the office of the lender, an
16 attorney at law, or a title company;

17 (O) permits a lender to contract for and receive
18 any fixed or variable rate of interest authorized under statute;

19 (P) is made by one of the following that has not
20 been found by a federal regulatory agency to have engaged in the
21 practice of refusing to make loans because the applicants for the
22 loans reside or the property proposed to secure the loans is located
23 in a certain area:

24 (i) a bank, savings and loan association,
25 savings bank, or credit union doing business under the laws of this
26 state or the United States;

27 (ii) a federally chartered lending

1 instrumentality or a person approved as a mortgagee by the United
2 States government to make federally insured loans;

3 (iii) a person licensed to make regulated
4 loans, as provided by statute of this state;

5 (iv) a person who sold the homestead
6 property to the current owner and who provided all or part of the
7 financing for the purchase; ~~[or]~~

8 (v) a person who is related to the homestead
9 property owner within the second degree of affinity or
10 consanguinity; or

11 (vi) a person regulated by this state as a
12 mortgage broker; and

13 (Q) is made on the condition that:

14 (i) the owner of the homestead is not
15 required to apply the proceeds of the extension of credit to repay
16 another debt except debt secured by the homestead or debt to another
17 lender;

18 (ii) the owner of the homestead not assign
19 wages as security for the extension of credit;

20 (iii) the owner of the homestead not sign
21 any instrument in which blanks are left to be filled in;

22 (iv) the owner of the homestead not sign a
23 confession of judgment or power of attorney to the lender or to a
24 third person to confess judgment or to appear for the owner in a
25 judicial proceeding;

26 (v) the lender, at the time the extension of
27 credit is made, provide the owner of the homestead a copy of all

documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made; [and]

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date ~~[within a reasonable time after]~~ the lender or holder

1 is notified by the borrower of the lender's failure to comply by:

2 (a) paying to the owner an amount
3 equal to any overcharge paid by the owner under or related to the
4 extension of credit if the owner has paid an amount that exceeds an
5 amount stated in the applicable Paragraph (E), (G), or (O) of this
6 subdivision;

7 (b) sending the owner a written
8 acknowledgement that the lien is valid only in the amount that the
9 extension of credit does not exceed the percentage described by
10 Paragraph (B) of this subdivision, if applicable, or is not secured
11 by property described under Paragraph (H) or (I) of this
12 subdivision, if applicable;

13 (c) sending the owner a written notice
14 modifying any other amount, percentage, term, or other provision
15 prohibited by this section to a permitted amount, percentage, term,
16 or other provision and adjusting the account of the borrower to
17 ensure that the borrower is not required to pay more than an amount
18 permitted by this section and is not subject to any other term or
19 provision prohibited by this section;

20 (d) delivering the required documents
21 to the borrower if the lender fails to comply with Subparagraph (v)
22 of this paragraph or obtaining the appropriate signatures if the
23 lender fails to comply with Subparagraph (ix) of this paragraph;

24 (e) sending the owner a written
25 acknowledgement, if the failure to comply is prohibited by
26 Paragraph (K) of this subdivision, that the accrual of interest and
27 all of the owner's obligations under the extension of credit are

1 abated while any prior lien prohibited under Paragraph (K) remains
2 secured by the homestead; or

3 (f) if the failure to comply cannot be
4 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
5 failure to comply by a refund or credit to the owner of \$1,000 and
6 offering the owner the right to refinance the extension of credit
7 with the lender or holder for the remaining term of the loan at no
8 cost to the owner on the same terms, including interest, as the
9 original extension of credit with any modifications necessary to
10 comply with this section or on terms on which the owner and the
11 lender or holder otherwise agree that comply with this section; and

12 (xi) the lender or any holder of the note
13 for the extension of credit shall forfeit all principal and
14 interest of the extension of credit if the extension of credit is
15 made by a person other than a person described under Paragraph (P)
16 of this subdivision or if the lien was not created under a written
17 agreement with the consent of each owner and each owner's spouse,
18 unless each owner and each owner's spouse who did not initially
19 consent subsequently consents;

20 (7) a reverse mortgage; or

21 (8) the conversion and refinance of a personal
22 property lien secured by a manufactured home to a lien on real
23 property, including the refinance of the purchase price of the
24 manufactured home, the cost of installing the manufactured home on
25 the real property, and the refinance of the purchase price of the
26 real property.

27 SECTION 2. Subsection (f), Section 50, Article XVI, Texas

Constitution, is amended to read as follows:

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

SECTION 3. Subsection (g), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION

50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL

1 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
2 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

3 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
4 WITH A COURT ORDER;

5 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
6 PERCENT OF THE LOAN AMOUNT;

7 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
8 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
9 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

10 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

11 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

12 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
13 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
14 PRIMARILY FOR THE PRODUCTION OF MILK;

15 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
16 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
17 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
18 HOME;

19 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
20 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
21 GIVEN TIME;

22 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
23 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
24 PERIOD;

25 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
26 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
27 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS

1 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
2 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
3 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

4 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
5 TITLE COMPANY, OR AN ATTORNEY AT LAW;

6 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
7 INTEREST AUTHORIZED BY STATUTE;

8 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
9 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
10 CONSTITUTION; ~~[AND]~~

11 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
12 THE TEXAS CONSTITUTION MUST:

13 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
14 DEBT EXCEPT A DEBT THAT IS ~~[NOT]~~ SECURED BY YOUR HOME OR OWED TO
15 ANOTHER ~~[DEBT TO THE SAME]~~ LENDER;

16 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

17 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
18 HAVE BLANKS LEFT TO BE FILLED IN;

19 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
20 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
21 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

22 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
23 YOU SIGN AT CLOSING;

24 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
25 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
26 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

27 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE

1 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
2 THE LIEN, WHICHEVER IS APPROPRIATE;

3 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
4 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

5 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
6 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

7 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
8 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
9 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
10 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
11 CONSTITUTION; AND

12 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

13 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND
14 REBORROW MONEY UNDER THE LINE OF CREDIT;

15 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN
16 AN AMOUNT OF AT LEAST \$4,000;

17 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
18 SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE
19 LINE OF CREDIT;

20 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND
21 COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE
22 LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

23 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE
24 EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY
25 NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE
26 DATE THE LINE OF CREDIT IS ESTABLISHED;

27 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT

1 AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR
2 HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED,
3 YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT
4 UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE;
5 AND

6 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS
7 OF THE LINE OF CREDIT.

8 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
9 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
10 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

11 If the discussions with the borrower are conducted primarily
12 in a language other than English, the lender shall, before closing,
13 provide an additional copy of the notice translated into the
14 written language in which the discussions were conducted.

15 SECTION 4. Section 50, Article XVI, Texas Constitution, is
16 amended by adding Subsections (t) and (u) to read as follows:

17 (t) A home equity line of credit is a form of an open-end
18 account that may be debited from time to time, under which credit
19 may be extended from time to time and under which:

20 (1) the owner requests advances, repays money, and
21 reborrows money;

22 (2) any single debit or advance is not less than
23 \$4,000;

24 (3) the owner does not use a credit card, debit card,
25 preprinted solicitation check, or similar device to obtain an
26 advance;

27 (4) any fees described by Subsection (a)(6)(E) of this

1 section are charged and collected only at the time the extension of
2 credit is established and no fee is charged or collected in
3 connection with any debit or advance;

4 (5) the maximum principal amount that may be extended
5 under the account, when added to the aggregate total of the
6 outstanding principal balances of all indebtedness secured by the
7 homestead on the date the extension of credit is established, does
8 not exceed an amount described under Subsection (a)(6)(B) of this
9 section;

10 (6) no additional debits or advances are made if the
11 total principal amount outstanding exceeds an amount equal to 50
12 percent of the fair market value of the homestead as determined on
13 the date the account is established;

14 (7) the lender or holder may not unilaterally amend
15 the extension of credit; and

16 (8) repayment is to be made in regular periodic
17 installments, not more often than every 14 days and not less often
18 than monthly, beginning not later than two months from the date the
19 extension of credit is established, and:

20 (A) during the period during which the owner may
21 request advances, each installment equals or exceeds the amount of
22 accrued interest; and

23 (B) after the period during which the owner may
24 request advances, installments are substantially equal.

25 (u) The legislature may by statute delegate one or more
26 state agencies the power to interpret Subsections (a)(5)-(a)(7),
27 (e)-(p), and (t), of this section. An act or omission does not

1 violate a provision included in those subsections if the act or
2 omission conforms to an interpretation of the provision that is:

3 (1) in effect at the time of the act or omission; and

4 (2) made by a state agency to which the power of
5 interpretation is delegated as provided by this subsection or by an
6 appellate court of this state or the United States.

7 SECTION 5. This proposed constitutional amendment shall be
8 submitted to the voters at an election to be held September 13,
9 2003. The ballot shall be printed to permit voting for or against
10 the proposition: "The constitutional amendment authorizing a home
11 equity line of credit, providing for administrative interpretation
12 of home equity lending law, and otherwise relating to the making,
13 refinancing, repayment, and enforcement of home equity loans."

S.J.R. No. 42

President of the Senate

Speaker of the House

I hereby certify that S.J.R. No. 42 was adopted by the Senate on May 14, 2003, by the following vote: Yeas 26, Nays 5; and that the Senate concurred in House amendments on May 29, 2003, by the following vote: Yeas 28, Nays 3.

Secretary of the Senate

I hereby certify that S.J.R. No. 42 was adopted by the House, with amendments, on May 24, 2003, by the following vote: Yeas 115, Nays 0, one present not voting.

Chief Clerk of the House

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

May 6, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.),
Committee Report 1st House, Substituted

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

April 7, 2003

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John Keel, Director, Legislative Budget Board

IN RE: SJR42 by Carona (Proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.), **As Introduced**

No fiscal implication to the State is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$85,275.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 450 Savings and Loan Department, 451 Department of Banking

LBB Staff: JK, JRO, RT, RB

S.J.R. No. 42

By Canon

proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans.

MAR 10 2003 Filed with the Secretary of the Senate **BUSINESS AND**
MAR 20 2003 Read and referred to Committee on **COMMERCE**
MAY 07 2003 Reported favorably _____
Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed
Laid before the Senate
MAY 14 2003 Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ years, _____ nays
MAY 14 2003 Read second time, amended, and ordered engrossed by: { unanimous consent
a viva voce vote
_____ years, _____ nays
MAY 14 2003 Senate and Constitutional 3 Day Rule suspended by a vote of 27 yeas, 4 nays.
MAY 14 2003 Read third time, _____, and passed by: 26 yeas, 5 nays

Latay Spaw
SECRETARY OF THE SENATE

OTHER ACTION:

May 14, 2003 Engrossed
May 16, 2003 Sent to House

Engrossing Clerk Mandi Randolph

MAY 16 2003 Received from the Senate
MAY 16 2003 Read first time and referred to Committee on **Financial Institutions**
MAY 19 2003 Reported _____ favorably (~~as amended~~) (~~as introduced~~)
MAY 20 2003 Sent to Committee on Calendars
MAY 24 2003 Read second time (~~as amended~~) (amended) and adopted (~~passed to third reading~~) by a
record vote of 115 yeas, 0 nays, 1 present, not voting
Read third time (amended) and finally adopted (failed of adoption) by a
record vote of _____ yeas, _____ nays, _____ present, not voting
MAY 26 2003 Returned to Senate.
MAY 26 2003 Returned from House without amendment.
MAY 26 2003 Returned from House with 3 amendments.
MAY 29 2003 Concurred in House amendments by ~~a viva voce vote~~ 28 yeas, 3 nays.

Robert Haney
CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays

03 MAY 19 PM 6:50
HOUSE OF REPRESENTATIVES